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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. VALERI MYSIN, Defendant and Appellant.	C041604 (Super. Ct. No. 99F03677)

A jury convicted defendant Valeri Mysin of felony hit and run driving. (Veh. Code, § 20001, subd. (a).)[1] He was sentenced to an enhanced three-year prison term pursuant to subdivision (b)(2) of section 20001 and ordered to pay $12,977.86 in victim restitution.[2]

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[1] All further section references are to the Vehicle Code unless otherwise specified.

[2] Section 20001 provides in pertinent part as follows:

On appeal, defendant raises several challenges. He contends the evidence is not sufficient to establish two elements of the offense, (1) that he was "involved in an accident" within the meaning of section 20001, subdivision (a), and (2) that he knew or should have known he was involved in an accident. He also contends the trial court erred by reinstructing the jury after the jury requested clarification of "knowingly involved," by denying his motion to dismiss his conviction pursuant to Penal Code section 1385, by imposing a harsher sentence pursuant to section 2001, subdivision (b)(2), and by ordering him to pay victim restitution.

We agree with defendant's two sentencing claims. We shall strike the restitution fine, reverse the sentence imposed under section 2001, subdivision (b)(2), and remand the case for sentencing pursuant to subdivision (b)(1). In all other respects, we shall affirm the judgment.

"(a) The driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

"(b)(1) Except as provided in paragraph (2), any person who violates subdivision (a) shall be punished by imprisonment in the state prison, or in a county jail for not more than one year . . . .

"(2) If the accident described in subdivision (a) results in death or permanent, serious injury, any person who violates subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year . . . ."

FACTUAL AND PROCEDURAL BACKGROUND

A. Prosecution's Case-in-Chief

About 2 p.m. on January 10, 1999, defendant, who was driving a 1993 Toyota MR2 (MR2), and his co-defendant Ruslan Palamaryuk, who was driving a Corvette, were driving southbound on Auburn Boulevard in Citrus Heights. Auburn Boulevard makes a turn from a north-south direction to an east-west direction as it intersects with Old Auburn Road, and changes from a one-lane to a two-lane road going westbound. The speed limit is 40 miles per hour. As the Corvette and MR2 took the turn, neither vehicle slowed down. The MR2 was going approximately 35 miles per hour when it came right up on the bumper of a pickup truck and then about half way through the curve, it moved into the number one lane[3] to pass the truck. Once through the curve, the Corvette pulled up behind the truck and then accelerated into the number one lane to pass it and then moved back into the number two lane to pass the MR2. The two vehicles continued to accelerate as they proceeded side-by-side down Auburn Boulevard at a high rate of speed, somewhere between 50 to 80 miles per hour. They appeared to be chasing each other, jockeying back and forth for position.

Meanwhile, 63-year-old Patricia Jamieson was driving a Toyota Corolla traveling southbound on Raintree Drive, which

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[3] The number one lane is the fast lane, closest to the center divide, the number two lane is the slow lane, closest to the curb.

runs perpendicular to westbound Auburn Boulevard. Jamieson stopped at the Raintree-Auburn intersection and slowly inched forward onto Auburn Boulevard. Then, just as the Corvette accelerated into the number two lane, she pulled straight into that lane, perpendicular to the flow of traffic. The Corvette applied the brakes and swerved to the left, but was unable to avoid hitting the Toyota broadside, slamming into the driver's door. The force of the collision caused the Toyota to spin around, coming to rest in the number one lane facing eastbound. Skid marks indicated the Corvette was traveling somewhere between 73 and 81 miles per hour just before hitting the Toyota. The collision sprayed glass and plastic debris onto the road.

Defendant was driving in the number one lane just behind the Corvette at the moment of impact. He drove through flying debris from the collision, which hit and shattered his windshield. He continued on without stopping and drove directly to the United Artist Theaters on Greenback Lane in Citrus Heights, where he parked his vehicle.

Police officers who witnessed the collision immediately went to the aid of the two drivers in the collision. Palamaryuk indicated he was okay and was directed to sit on the grass. Jamieson had no pulse and was non-responsive. They removed her from her vehicle, and she was taken by ambulance to the hospital where she died of her injuries at 2:40 p.m.

Meanwhile, Sacramento Sheriff's Deputy William Roberts, assigned to the Citrus Heights Police Department, passed by the

collision en route to the United Theaters on an unrelated call. When he pulled into the theater parking lot, he noticed the MR2 with a shattered windshield parked in a stall. About 15 minutes later, while he was still examining the MR2, defendant approached him and indicated he had driven the MR2 to the theaters.

Defendant told the deputy he was driving southbound on Auburn Boulevard approaching the westbound turn at Old Auburn Road, when he noticed the Corvette. He recognized the driver who he identified as Ruslan and knew to be a fireman. Defendant explained that he proceeded to complete the turn, but attempted to gain distance on the Corvette, so he accelerated and changed into the number one lane. He was going about 60 miles per hour when the Corvette passed him. He estimated the speed of the Corvette at 100 miles per hour. Defendant saw the Corolla pull out in front of the Corvette and the resulting collision. As he passed the collision site, debris from the collision struck his windshield, shattering it.

Defendant advised Deputy Roberts he was approximately 125 feet behind the collision when it occurred. He explained that he did not stop at the scene because he was "scared and . . . he was meeting some friends at the movie theater," so he continued on to the theater. At the theater, he telephoned some friends and then returned to the scene of the collision where he contacted an officer. The officer told him to wait, but when no one contacted him, he went back to the theater.

Defendant was interviewed by Sergeant Gernandt on February 24, 1999, at the Citrus Heights Police Department.[4] During this interview, he advised the sergeant that he had seen Palamaryuk at River Rock Cafe in Citrus Heights "a couple of times," although they were not friends. Defendant claimed he bought his car as a salvage vehicle, but Palamaryuk said "'we should race sometime.'" Defendant said "What are you talking about? You got Vet, you know?" Both men laughed, and defendant dismissed the challenge.

Defendant further stated that on the day of the collision, he was stopped for a red light at Antelope Road and Auburn Boulevard when Palamaryuk pulled up next to him. They exchanged greetings and drove off when the light turned green. Defendant said he saw two police officers parked down the road, so he changed lanes and Palamaryuk passed him. Defendant was going 45 to 55 miles per hour as he came out of the curve. Palamaryuk was five or six car lengths ahead of him when he hit the Toyota, which "just flew apart and hit [defendant's] car." Defendant had to steer towards the center lane to avoid debris from the accident. He did not stop because he did not hit anyone and he saw two police officers who were present to assist anyone who needed help.

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[4] The statement was videotaped and admitted into evidence. A transcript of the tape was also admitted into evidence, and is included in the clerk's transcript on appeal.

B. Defense

Defendant did not testify but called several witnesses. His cousin Julia Samylovich testified that she lives in Citrus Heights, a few streets off Old Auburn Road, near the scene of the collision, and along the route to the United Artists Theaters on Greenback. Defendant had been to her house many times, but did not come by the day of the collision. Her house has a two-car garage, and defendant could have put his car in her garage if he had come by her house the day of the collision.

Mikhail Palamaryuk, Ruslan's father, was at the scene of the collision where he saw defendant twice approach a uniformed police officer and tell the officer he was involved in the incident.

Laurence Neuman, an expert on accident reconstruction, testified to the errors and weaknesses in the prosecution's accident reconstruction evidence. According to Neuman, the Corvette was traveling between 57 and 64 miles per hour at the moment of impact, while the Toyota was going three to eight miles per hour at the moment of impact. Neuman also testified that defendant's windshield looked like it was riddled with bullet holes which had to be caused by something reasonably heavy, although none of the debris from the collision laying in the road appeared to be of sufficient weight. Although lug nuts from the Toyota's severed wheel were capable of causing that damage, they were still attached to the wheel. The automobile in front of defendant's vehicle, however, could have kicked up debris from the accident or kicked up anything else laying in

the road such as a rock, and sent it flying into defendant's windshield.

C. Procedure

Defendant was charged with vehicular manslaughter with gross negligence (Pen. Code, § 192, subd. (c)(1); count 1)[5] and felony hit and run driving involving serious injury or death. (§ 20001, subd. (a); count 2.) It was also alleged in connection with count 1 that defendant fled the scene of the crime. (§ 20001, subd. (c).)

The jury acquitted him of the manslaughter charge and convicted him of felony hit and run driving. He was sentenced to prison for the mid-term of three years and awarded 961 days presentence custodial and behavioral credits. He was ordered to pay a restitution fine of $600 and $12,997.86 in victim restitution. Defendant now appeals from the judgment and sentence.

DISCUSSION

I.

Substantial Evidence

Defendant contends the evidence is insufficient to establish two elements of hit and run driving (§ 20001); (1) that he was "involved in an accident" and, (2) that he knew or should have known he was involved in an accident. Respondent

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[5] Codefendant Ruslan Palamaryuk was charged with a single count of vehicular manslaughter, which was tried before a separate jury. A mistrial was declared when the jury was unable to reach a verdict and the charge was dismissed.

contends the verdict is supported by substantial evidence. We agree with respondent.

A. Standard of Review

Although defendant acknowledges the proper standard of review, he nevertheless asks us to reweigh the evidence and reconsider the credibility of witnesses.[6] That is not our province.

In determining the sufficiency of the evidence, we apply the substantial evidence test by reviewing the whole record in the light most favorable to the judgment to see whether it contains substantial evidence--i.e. evidence that is credible and of solid value--from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 576; *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319 [61 L.Ed.2d 560, 573].) We must presume in support of the verdict the existence of every fact the jury could reasonably have deduced from the evidence. (*People v. Bloyd* (1987) 43 Cal.3d 333, 346-347.) Our task is not to reweigh the evidence but to decide whether the record contains sufficient evidence to warrant the inference of guilty

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[6] While conceding there is "at least some evidence" the two vehicles were racing, defendant argues that a review of the entire record indicates the evidence in support of the speed contest theory is "trifling when balanced against the voluminous evidence there was no race between the Corvette and the MR2." To the extent this claim asks us to reweigh the evidence, we categorically reject it. (*People v. Perry* (1972) 7 Cal.3d 756, 785.)

drawn by a rational trier of fact. (*People v. Perry, supra,* 7 Cal.3d at p. 785.)

B. Involved in an Accident

Defendant contends he was not involved in an accident because the victim did not have to take evasive action to avoid his vehicle and he was not the cause of the accident. The law does not support his argument.

Section 20001, subdivision (a) provides that "[t]he driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004."[7] Sections 20003 and 20004 direct the driver to

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[7] Section 20003 provides:

"(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address, the names and current residence addresses of any occupant of the driver's vehicle injured in the accident, the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with, and shall give the information to any traffic or police officer at the scene of the accident. The driver also shall render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person.

(b) Any driver or injured occupant of a driver's vehicle subject to the provisions of subdivision (a) shall also, upon being requested, exhibit his or her driver's license, if available, or, in the case of an injured occupant, any other

provide specified information to the injured party, any occupant of the vehicle collided with, and to designated law enforcement officers.

The gravamen of the offense "is not the initial injury of the victim, but leaving the scene without presenting identification or rendering aid." (*People v. Escobar* (1991) 235 Cal.App.3d 1504, 1509; *People v. Braz* (1998) 65 Cal.App.4th 425, 432; *People v. Corners* (1985) 176 Cal. App. 3d 139, 148 ["Although a violation of section 20001 is popularly denominated 'hit-and-run,' the act made criminal thereunder is not the 'hitting' but the 'running.'"].) The broad Legislative purpose of the statute is to benefit persons injured in vehicle accidents by prohibiting drivers from leaving them in distress and danger from lack of medical care, and from seeking to avoid civil or criminal liability resulting from the accident. (*Karl v. C.A. Reed Lumber Co.* (1969) 275 Cal.App.2d 358, 361; *Bailey*

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available identification, to the person struck or to the driver or occupants of any vehicle collided with, and to any traffic or police officer at the scene of the accident."

Section 20004 provides:

"In the event of death of any person resulting from an accident, the driver of any vehicle involved after fulfilling the requirements of this division, and if there be no traffic or police officer at the scene of the accident to whom to give the information required by Section 20003, shall, without delay, report the accident to the nearest office of the Department of the California Highway Patrol or office of a duly authorized police authority and submit with the report the information required by Section 20003."

v. Superior Court (1970) 4 Cal.App.3d 513, 518-519; *People v. Kroncke* (1999) 70 Cal.App.4th 1535, 1546.)

Because of the statute's broad purpose, the acts required by the statute must be "performed by all drivers of vehicles involved in accidents causing injuries, whether or not they are responsible for the accident." (*Bailey v. Superior Court, supra*, 4 Cal.App.3d at p. 521.) Contrary to defendant's firmly held belief, section 20001 does not require that one be the legal cause of the accident. (*People v. Bammes* (1968) 265 Cal.App.2d 626, 631, 633 [construing former § 430, predecessor to § 20001], criticized on other grounds in *Byers v. Justice Court* (1969) 71 Cal.2d 1039, 1045; *People v. Braz, supra,* 65 Cal.App.4th at p. 432.) Nor does the statute require that the driver strike or injure a pedestrian or another vehicle. (*People v. Kinney* (1938) 28 Cal.App.2d 232, 238 [construing former § 482, subd. (a), predecessor to § 20003].) The statute applies without regard to state of mind or legal responsibility for the accident. (*People v. Jimenez* (1992) 11 Cal.App.4th 1611, 1626, disapproved on other grounds in *People v. Kobrin* (1995) 11 Cal.4th 416, 428, fn. 7.)

The word "involved" as used in section 20001 is not statutorily defined, although case law has defined it to mean "connected with (an accident) in a natural or logical manner." (*People v. Sell* (1950) 96 Cal.App.2d 521, 523 [construing former § 480].) In construing the terms of a statute, we look first to the plain dictionary meaning of the actual words. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 75.) The dictionary

defines the word "involved" to mean being "affected" or "implicated." (Webster's 3d New Internat. Dict. (1971) p. 1191.)

The decisions in other jurisdictions under similarly worded statutes have found that a participant in a drag race which results in injury or death is "involved in an accident" even though he was not the driver of the automobile that struck the third vehicle. (*State v. Petersen* (1974) 17 Or.App. 478, 494-495 [522 P.2d 912, 920], reversed in part on other grounds in *State v. Petersen* (1974) 270 Or. 166, 168 [526 P.2d 1008, 1009]; *Arizona v. Korovkin* (2002) 202 Ariz. 493, 498 [47 P.3d 1131, 1136].)

Applying these principles, we find there is substantial evidence that defendant was "involved in an accident." Three witnesses observed the two men driving westbound on Auburn Boulevard about 2 p.m. on January 10, 1999, at a high rate of speed. Although their estimates of the two vehicles' exact speed varied (50, 60, and 80 miles per hour), their testimony established that both vehicles were traveling well over the posted speed limit of 40 miles per hour and expert testimony established the Corvette was going between 73 and 81 miles per hour when it struck the Corolla. The two vehicles moved back and forth from one lane to the next to pass each other and other vehicles on the road. According to one witness, the two vehicles appeared to be chasing each other, jockeying back and forth for position. By defendant's own admission, he was traveling 60 miles per hour, while in his estimation, the

Corvette was traveling 100 miles per hour. He admitted he initially accelerated and changed lanes to gain distance on the Corvette. He further admitted he was familiar with Palamaryuk, had seen him at a local cafe a couple of times prior to the collision, and that Palamaryuk suggested to him they "should race sometime." In light of this challenge, defendant's acceptance of that challenge by accelerating to gain distance on the Corvette, and the speed and manner of their driving, the jury could reasonably conclude defendant and Palamaryuk were involved in a road race.

At the moment of impact, defendant was east of the Corvette and as he passed by the collision site, his vehicle was struck by debris, and he had to drive towards the center divide to avoid being hit by some scrap metal that was flying through the air. Although defendant argues it was not his car that witnesses observed racing the Corvette, we are bound by the jury's adverse determination on that factual issue. (*People v. Perry*, *supra*, 7 Cal.3d at p. 785.)[8]

In sum, the evidence reasonably supports the jury's implied finding that defendant was not a hapless bystander who had the misfortune of being in the wrong place at the wrong time, but an

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[8] The eyewitnesses described the second vehicle variously as a dark green sports car, a green Camaro, a dark colored Camaro and a dark colored Firebird. One of the witnesses was shown four photos of defendant's car and he stated it looked like the green car he saw and "looked similar to a Camaro." The jury was given photographs of defendant's vehicle, and pictures of a 1985 Camaro and a 1985 Firebird.

active participant in a road race in which he and Palamaryuk exceeded the legal speed limit, setting in motion a chain of events that culminated in a fatal collision. As a result of defendant's proximity to the collision, his windshield was shattered by debris from the collision, and he was forced to drive around the site to avoid being hit by other airborne debris. We therefore find defendant was involved in an accident because he participated in a deadly chain of events which directly affected him.

Nevertheless, he contends the verdict in his prior trial where the jury acquitted him of second degree murder and the verdict of acquittal of vehicular manslaughter in the present proceedings, constitute an implied rejection of the prosecution's speed contest theory. He therefore argues that because the speed contest was the factual underpinning of the hit and run verdict, the jury necessarily rejected the factual basis of the verdict, requiring reversal of his conviction for hit and run driving.

First, we find no inconsistency between the verdicts. (See *People v. Bammes, supra*, 265 Cal.App.2d at p. 633 [acquittal of manslaughter charges not inconsistent with conviction of hit and run driving].) Murder and manslaughter are concerned with criminal liability, which turns on questions of mental state and causation, while felony hit and run driving is concerned with involvement in the accident. (*Ibid.*) Because wrongdoing and causation are not elements of that offense (*People v. Jimenez, supra*, 11 Cal.App.4th at p. 1626; *People v. Braz, supra*, 65

Cal.App.4th at p. 432), the two offenses do not share an identity of elements and therefore an acquittal of one is not inconsistent with a conviction in the other. (See also *People v. Hamilton* (1978) 80 Cal.App.3d 124, 129-130 [rejecting a similar claim where the defendant was acquitted of engaging in a speed contest but convicted of hit and run driving].)

Moreover, even if the verdicts were inconsistent, reversal is not required. "An acquittal of one or more counts shall not be deemed an acquittal of any other count." (Pen. Code, § 954; *People v. Palmer* (2001) 24 Cal.4th 856, 860 ["The law generally accepts inconsistent verdicts as an occasionally inevitable, if not entirely satisfying, consequence of a criminal justice system that gives defendants the benefit of a reasonable doubt as to guilt, and juries the power to acquit whatever the evidence"]; see also *United States v. Powell* (1984) 469 U.S. 57, 66, 68-69 [83 L.Ed.2d, 461, 469-471] [inconsistent verdicts generally unreviewable].) Thus, a verdict of conviction on one count which appears inconsistent with a verdict of acquittal on another count "afford[s] no basis for a reversal where the evidence is sufficient to support the conclusion that the defendant is guilty of the offense of which he stands convicted." (*In re Johnston* (1935) 3 Cal.2d 32, 36.) Because we have concluded there is sufficient substantial evidence to establish defendant was engaged in a speed contest resulting in a fatal collision, we also reject this claim.

C. Knowledge

Defendant next claims that even if he was involved in the accident within the meaning of section 20001, his conviction is not supported by substantial evidence that he knew or should have known he was involved in the collision. Respondent contends the evidence is sufficient to support the jury's implied finding of knowledge. We agree with respondent.

A violation of section 20001 requires proof the driver knew the facts triggering the duty to stop and provide the requisite information. (*People v. Hamilton, supra,* 80 Cal.App.3d at p. 132.) The element of knowledge requires proof that the driver had knowledge of three predicate facts: (1) an accident has occurred, (2) he or she was involved in the accident, and (3) the accident resulted in injury or was of such a nature one would reasonably anticipate the accident resulted in injury to another. (*Ibid.*) Defendant concedes the evidence establishes the first and third factual components of knowledge, but contends the evidence fails to establish the second fact, that he knew he was involved in an accident.[9] We disagree and find ample evidence that defendant knew he was involved in an accident.

A defendant's knowledge of the accident is a question of fact to be determined by the trier of fact, and is generally

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[9] Defendant points to the evidence he parked his damaged vehicle in a public parking lot open to view, he spoke openly and cooperatively with the officer in the theater parking lot, and he agreed to speak to officers months after the accident.

proven by the circumstances surrounding the particular accident. (*People v. Ryan* (1981) 116 Cal.App.3d 168, 180; *People v. Henry* (1937) 23 Cal.App.2d 155, 160 [sound or visual evidence of accident, obvious damage to defendant's car, and subsequent acts of the defendant, including implied admissions]; *People v. Bammes, supra*, 265 Cal.App.2d at p. 633 [degree of force of collision and amount of injury or damage, close proximity to collision resulting in damage to defendant's vehicle from collision debris, post-collision conduct and statements].)

The collision occurred while defendant and Palamaryuk were racing down Auburn Boulevard. As a result of the race, Palamaryuk was unable to avoid hitting the Corolla when it pulled out in front of him. Defendant admitted to Deputy Roberts he was 125 feet behind the Corvette when the collision occurred and he saw it happen. Because of his close proximity to the collision, his windshield was shattered by debris from the Corolla and he was forced to take evasive action to avoid being hit by other flying debris. He also admitted he did not stop after his windshield was shattered because he "was scared" and "was meeting some friends at the movie theater," so he continued on to the theater. In a similar vein, he told Detective Gernandt he did not stop immediately after the collision because he "was in shock, so I left the place." He went on to explain that he "thought about it, but I wasn't really supposed to stop, 'cause I didn't hit no one, you know. And I seen two peace officers over there, so I figured they were gonna help them out . . . ." After driving to the theater,

defendant returned to the scene of the collision, where according to Mikhail Palamaryuk, defendant approached a uniformed police officer and told him he was involved in the incident.

Based on defendant's admissions that he was "scared" and "in shock" as a result of the collision, and that he "thought" about stopping, the jury could reasonably infer he knew he was involved in a terrible accident and failed to stop, render aid, and provide the required information out of fear of being implicated in the crash rather than out of ignorance of any facts. Section 20001 requires that a driver involved in an accident "*immediately* stop the vehicle at the scene of the accident . . . ." (Italics added.) Thus, while defendant's effort to contact an officer upon his return to the scene of the crash was too late to satisfy the requirements of section 20001, the evidence serves as an admission that he was involved in the accident.

Under these circumstances, we conclude a rational trier of fact could reasonably find defendant knew he was involved in an accident. We therefore find there is substantial evidence to support the jury's verdict.

II.

Jury's Request for Clarification

Defendant contends the trial court's response to the jury's request for clarification of the meaning of "knowingly involved" constitutes reversible error because the court further

instructed the jury with misleading and nonresponsive instructions. In particular, defendant cites as error the giving of CALJIC Nos. 2.52, 3.30, 4.36, 12.73, 12.74, and a special instruction on superceding cause. Respondent contends this claim is without merit. We agree with respondent and find no error.

After deliberations began, the jury sent the court two notes. The first note indicated the jury was at an impasse on the vehicular manslaughter charge.[10] The second note requested clarification on the meaning of "knowingly involved," advising that without further clarification on this element, it was also at an impasse on the hit and run driving charge.[11]

In response to these notes, both counsel submitted instructions for the court to reread to the jury. After discussing the matter with counsel, the court decided to give all instructions requested.[12]

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[10] The note stated: "We the jury . . . request the following: We are at an impass[e] on Count 1."

[11] This note stated: "We the jury . . . request the following: Further clarification or instruction on Count 2. We all agree that Mysin was involved in the accident, that he was involved in the accident because debris from the accident damaged his windshield - but some believe based on lack of evidence, he didn't know he was involved in the accident. We all also agree on all the other points required by Count 4. We agree that if you cannot shed any more light on 'knowingly involved', then we are at an impass[e] on this count."

[12] The instructions given by the court were as follows: CALJIC No. 1.21 [defining "knowingly"]; CALJIC No. 2.52 [flight]; CALJIC No. 3.30 [general criminal intent]; CALJIC No.

The trial court has a statutory duty to assist the jury during deliberations in order to help it understand the legal principles it is asked to apply. (Pen. Code, § 1138; *People v. Beardslee* (1991) 53 Cal.3d 68, 97.) "This does not mean the court must always elaborate on the standard instructions. Where the original instructions are themselves full and complete, the court has discretion under [Penal Code] section 1138 to determine what additional explanations are sufficient to satisfy the jury's request for information." (*People v. Beardslee, supra*, 53 Cal.3d at p. 97; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1213.) However, failure to comply with Penal Code section 1138 does not require reversal in the absence of a showing of prejudice. (*People v. Beardslee, supra*.) We discuss each instruction separately.[13]

3.31.5 [required mental state for all charged and lesser included offenses]; CALJIC No. 3.40 ["but for" causation]; CALJIC No. 3.41 [more than one cause]; CALJIC No. 4.36 [ignorance or mistake of law]; a special instruction on superceding intervening cause; CALJIC No. 8.90 [elements of vehicular manslaughter with gross negligence]; and CALJIC No. 12.70 [elements of felony hit and run driving]; CALJIC No. 12.73 [failure to stop, driver's duty not affected by blame for accident]; CALJIC No. 12.74 [definition of "immediately stop"]; and CALJIC No. 17.40 [the People and defendant are entitled to the opinion of each juror].

[13] The instructions given by the court in response to the jury's note had all been given as part of the court's initial charge to the jury, and with the exception of the special instruction on superceding causation, all of the instructions were the standard CALJIC instructions. Defendant does not contend any of these instructions were given in error at that time.

1. CALJIC No. 2.52

This instruction instructs on the flight of a person immediately after the commission of a crime.[14] Although we hold that a flight instruction is improper in a prosecution for felony hit and run driving, the instruction was appropriate to give in this case because it was relevant to the charge of voluntary manslaughter.

We are aware of two cases which hold that giving a flight instruction in a prosecution for hit and run driving is proper. (*People v. Ryan, supra,* 116 Cal.App.3d at p. 179; *People v. Moody* (1949) 93 Cal.App.2d 66, 71.) However, we do not find them persuasive and decline to follow them.

In *Ryan*, the court summarily rejected the claim that it was error to give CALJIC No. 2.52 in a hit and run driving prosecution. In so doing, it relied on *People v. Johnson* (1969) 271 Cal.App.2d 616 without benefit of analysis. (*People v. Ryan, supra*, 116 Cal.App.3d at p. 179.) *Johnson,* however, only involved a charge of burglary and possession of a concealable firearm, and held that a flight instruction on those charges was proper. (*People v. Johnson, supra*, 271 Cal.App.2d at p. 623.)

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[14] As read to the jury, CALJIC No. 2.52 states: "The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether a defendant is guilty or not guilty. The weight to which the circumstance is entitled is a matter for you to decide."

Because "it is axiomatic that cases are not authority for propositions not considered" (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1175), we must conclude that *People v. Johnson* does not provide support for the cited principle.

In *Moody*, the court reasoned that "[a]ny conduct of a defendant subsequent to the commission of a crime tending to show 'consciousness of guilt' is relevant and admissible, and flight is a circumstance to be considered by the jury in determining if there is a consciousness of guilt." (*Ibid*.) We respectfully disagree with this conclusion.

The flight instruction states in part "[t]he flight of a person *immediately after the commission of a crime*, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether a defendant is guilty or not guilty." Flight from the scene of an injury causing offense is generally relevant to show the defendant acted with a consciousness of guilt for the crime. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1223-1224.) On a charge such as vehicular manslaughter, flight is relevant to show a consciousness of guilt or responsibility for the underlying accident. (*People v. Navarette* (2003) 30 Cal.4th 458, 502; *Karl v. C.A. Reed Lumber Co., supra,* 275 Cal.App.2d at p. 362; *People v. Henry, supra,* 23 Cal.App.2d at p. 164.)

Here, however, the crime charged was hit and run driving, which is a wrong independent of any legal responsibility for the

original injury. It does not require proof a crime was committed or that the driver was at fault or responsible for the accident. (*Karl v. C.A. Reed Lumber Co., supra,* 275 Cal.App.2d at p. 361; *People v. Bammes, supra,* 265 Cal.App.2d at pp. 631 and 633; *People v. Jimenez, supra*, 11 Cal.App.4th at p. 1626; *People v. Braz, supra,* 65 Cal.App.4th at p. 432.) Moreover, because the gravamen of the offense is not the hitting, but the running (*People v. Escobar, supra,* 235 Cal.App.3d at p. 1509; *People v. Braz, supra,* 65 Cal.App.4th at p. 432), the offense is not complete until the driver leaves the scene of the accident without immediately stopping to render aid and provide the requisite information. Thus, failing to immediately stop at the scene of accident is an elemental fact of the offense, not flight from the offense.

Nevertheless, as noted, the instruction was relevant to the charge of vehicular manslaughter. (*People v. Navarette, supra,* 30 Cal.4th at p. 502; *People v. Henry, supra,* 23 Cal.App.2d at p. 164 [flight instruction properly given in prosecution for negligent homicide and felony hit and run driving because flight is an essential element of negligent homicide].) Because the jury informed the court it was at an impasse on that charge, the court properly gave the instruction on flight.

2. CALJIC No. 3.30[15]

Defendant contends giving this instruction was improper, nonresponsive, and potentially misleading. He reasons that because the jury's query related to the element of knowledge rather than intent, and section 20001 requires proof of knowledge, giving an instruction on general criminal intent failed to respond to the question and undermined the requirement of knowledge. We disagree.

"In determining whether instructional error has been established, we review the instructions as a whole to see if the entire charge delivered a correct interpretation of the law." (*People v. Hayes* (1990) 52 Cal.3d 577, 639.)

In response to the jury's query on the hit and run charge, the court gave CALJIC No. 1.21 defining "knowingly" and CALJIC No. 12.70 defining the offense of felony hit and run driving, the elements of the offense, and the three predicate facts required to prove knowledge. (See *People v. Hamilton*, *supra*, 80 Cal.App.3d at p. 132.) Defendant does not contend either of

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[15] CALJIC No. 3.30, as modified and given by the trial court, states: "In the crimes charged in Counts One and Two, namely, the vehicular manslaughter with gross negligence, and hit and run driving with death or serious bodily injury, and the crimes of misdemeanor vehicular manslaughter and misdemeanor hit and run with property damage, which are lesser crimes, there must exist a union or joint operation of act or conduct and general criminal intent. General intent does not require an intent to violate the law. When a person intentionally does that, which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful."

these two instructions were inadequate or otherwise improper. As part of the original charge, the jury was instructed to consider the instructions as a whole. (CALJIC No. 1.01.) In light of this last instruction, we find the jury was properly instructed on this offense.

In response to the jury's impasse on the manslaughter charge, the court gave the two instructions on mental state. (CALJIC Nos. 3.30 [general criminal intent] and 3.31.5 [required mental state for all charged and included offenses]. Again, defendant does not contend these instructions were originally given in error or that it was error to give them in connection with the manslaughter charge. We therefore find no error.

3. CALJIC No. 4.36[16]

Defendant next contends that giving CALJIC No. 4.36 on mistake or ignorance of the law was prejudicial error because he never argued that his failure to stop at the accident scene was due to a mistake of law, but by giving this instruction, the court appeared to side with the prosecution's argument to the jury. The prosecutor had argued that the defense theory (that Mysin had no reason to believe he was involved in an accident merely because his windshield sustained debris damage) was nothing more than a claim of ignorance of the law disguised as ignorance of fact. We reject defendant's claim. The

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[16] As given by the court, CALJIC No. 4.36 states: "When the evidence shows that a person voluntarily did that which the law declares to be a crime, it is no defense that he did not know that the act was unlawful or that he believed it to be lawful."

instruction was warranted by the evidence, which impliedly raised the defense of mistake.

The trial court has a duty to instruct on "the general principles of law . . . relevant to the issues raised by the evidence." (*People v. Flannel* (1979) 25 Cal.3d 668, 680-681; *People v. Sedeno* (1974) 10 Cal.3d 703, 715.) Ignorance or mistake of fact which disproves any criminal intent is a valid defense. (Pen. Code, § 26, subd. Three; *People v. Costa* (1991) 1 Cal.App.4th 1201, 1212; 1 Witkin and Epstein, Cal. Criminal Law (3d ed. 2000) Defenses, § 39, pp. 371-372.)[17] By contrast, ignorance of the law is no defense to a crime because criminal intent is the intent to commit the prohibited act, not the intent to violate the law. (*People v. O'Brien* (1892) 96 Cal. 171, 176; *People v. Smith* (1966) 63 Cal.2d 779, 793; *People v. Costa, supra,* 1 Cal.App.4th at p. 1212; 1 Wharton's Criminal Law (15th ed. 1993) § 79; 1 Witkin and Epstein, Cal Criminal Law, *supra*, Defenses, § 36, p. 367.) A mistake of fact has been defined as an "'"'honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which the person is indicted an innocent act, has always been held to

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17 The mistake of fact defense is described in CALJIC No. 4.35, which states: "An act committed or an omission made in ignorance or by reason of a mistake of fact which disproves any criminal intent is not a crime. Thus a person is not guilty of a crime if [he][she] commits an act or omits to act under an actual [and reasonable] belief in the existence of certain facts and circumstances which, if true, would make the act or omission lawful." (CALJIC No. 4.35 (6th ed. 1996).)

be a good defense . . . .'" [Citation.]'" (*People v. Young* (2001) 92 Cal.App.4th 229, 234, quoting *People v. Lucero* (1988) 203 Cal.App.3d 1011, 1016; *People v. Flanagan* (1924) 65 Cal.App. 268, 274-275.) Mistake of law, on the other hand, is a mistaken belief in the legal effect of the true facts and circumstances. (See *People v. Costa, supra*, 1 Cal.App.4th at p. 1212.)

Evidence was introduced that defendant told Deputy Roberts he thought about stopping at the accident scene but he believed he did not have to because he had not hit anyone. Defendant's cousin testified that she lived along the route to the United Artists Theaters and had a garage that defendant could have parked his vehicle in had he wanted to, but he did not come by that day. In her closing argument, defense counsel argued that defendant's conduct following the accident was consistent with his belief he was not in an accident and therefore he did not act with a consciousness of guilt. Thus, the evidence in light of the defense's theory raises an inference that defendant was laboring under a mistaken belief.

That belief however, was a mistake of law not a mistake about any of the facts and circumstances surrounding the accident. Defendant knew an accident had occurred, that it was likely the accident resulted in injury to the victim, and that his vehicle had been damaged by debris from the accident. His only mistake was in concluding that these circumstances did not give rise to a legal duty to stop and render aid under the statute. Because the evidence raised the issue of mistake of

law, the court properly instructed the jury that a mistake of law is not a defense.

4. CALJIC Nos. 12.73 and 12.74[18]

Defendant also challenges the court's decision to reread CALJIC Nos. 12.73 and 12.74 in regard to the duties of a driver involved in an accident. He asserts that "[b]because [these instructions] presuppose knowledge, [they] had no bearing on the jury's question and were liable to result in confusion."

Defendant fails to tells us what that confusion would be, and we disagree with his assumption that the instructions presuppose knowledge. They do not presuppose the fact of knowledge. CALJIC No. 12.73 instructs the jury on the circumstances giving rise to the duties required by section 20001, namely, that one is knowingly involved in an accident, and instructs that cause and blame do not affect the duty to comply with the statutory requirements. CALJIC No. 12.74

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[18] As given by the court, CALJIC NO. 12.73 states: "[T]he duties imposed by law upon the driver of a vehicle who knows that he just has been involved in an accident which has resulted in death or injury upon a person are not affected by the cause of or the blame for the accident. If the driver willfully fails to perform any of those duties, he is guilty of a crime, whether the accident was caused by his own or another's negligence or by the concurrent negligence of two or more persons or was unavoidable."

CALJIC No. 12.74, as read by the court, states: "The term immediately stop as used in these instructions means that the driver of a vehicle knowingly involved in an accident resulting in injury to or death of any person must stop his vehicle at the scene of the accident as promptly as reasonably possible under the circumstances of the case."

defines the duty to immediately stop when the driver of a vehicle is "knowingly involved in an accident . . . ."

The first of these instructions (CALJIC No. 12.73) properly responded to the jury's query by clarifying the circumstances that are and are not relevant in determining whether defendant was involved in an accident. The second of these instructions (CALJIC No. 12.74), at most was superfluous to the jury's query. The jury was also further instructed that it had to find defendant knew he was involved in an accident (CALJIC No. 12.70). In light of the total charge, the court sufficiently instructed the jury on the meaning of "knowingly involved."

5. Special Instruction on Causation[19]

Last, defendant contends rereading the special instruction on superceding cause solely in connection with the manslaughter charge was error which further confused the jury on the meaning of "involved in an accident." This claim is again based on defendant's mistaken view of the law and we reject it. Because causation is not an element of felony hit and run

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[19] The special instruction stated: "If you find that a defendant was negligent and that such negligence was a substantial factor in bringing about an injury to the victim, but that the immediate cause of the injury was some negligent conduct by that victim or a third person, a defendant is not relieved of liability for such injury, unless the negligent conduct of the victim or third person was unforeseeable, unpredictable, and statistically extremely improbable, such that the victim's negligence or the negligence of the third person breaks the chain of events set in motion by a defendant. The precise consequence need not have been foreseen. It is enough that the defendant should have foreseen the possibility of some harm of the kind which might result from his act."

driving (*People v. Bammes, supra,* 265 Cal.App.2d at pp. 631, 633; *Bailey v. Superior Court, supra*, 4 Cal.App.3d at p. 521; *People v. Braz, supra,* 65 Cal.App.4th at p. 432), the trial court properly limited the causation instructions, including the special instruction on superceding cause, to the charge of manslaughter. Accordingly, we find no instructional error.

III.

Dismissal under Penal Code Section 1385

Defendant contends the trial court abused its discretion by denying his request to dismiss his conviction pursuant to Penal Code section 1385.[20] Respondent contends there was no abuse of discretion. We find the request was properly denied.

Defendant filed a motion for dismissal pursuant to Penal Code section 1385 or to stay of execution of judgment pending appeal. The theory of this motion was that the driver of the car that collided with the victim's car "was convicted of nothing and spent no time in jail[, while d]efendant . . . has spent almost 2 years in custody for an accident he did not cause. . . . [and] has been found by two juries in two separate trials to not be responsible for the death of Mrs. Jamieson . . . ." Defendant also argued that the jury was erroneously instructed in several respects. The court denied the request to dismiss the conviction and to reduce the charge to a misdemeanor.

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[20] All further section references in this part are to the Penal Code unless otherwise specified.

Under Penal Code section 1385, subdivision (a), the trial court may on its "own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed." (*People v. Orin* (1975) 13 Cal.3d 937, 942, fn. 6.) The court's power under this section is broad but not absolute. (*Ibid.*) The statutory requirement that the dismissal be in the "'furtherance of justice' requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People*, in determining whether there should be a dismissal. [Citations.]'" (*Id.* at p. 945, quoting *People v. Beasley* (1970) 5 Cal.App.3d 617, 636.) At a minimum, "the reason for dismissal must be 'that which would motivate a reasonable judge.'" (*People v. Orin, supra*, quoting *People v. Curtiss* (1970) 4 Cal.App.3d 123, 126.)

In *People v. Superior Court (Howard)* (1968) 69 Cal.2d 491, 505, the court set forth the factors to be considered in making a determination under section 1385. "A determination whether to dismiss in the interests of justice after a verdict involves a balancing of many factors, including the weighing of the evidence indicative of guilt or innocence, the nature of the crime involved, the fact that the defendant has or has not been incarcerated in prison awaiting trial and the length of such incarceration, the possible harassment and burdens imposed upon the defendant by a retrial, and the likelihood, if any, that additional evidence will be presented upon a retrial."

Defendant argues that the trial court's comments "are noteworthy, for they disclose a sense of moral outrage even though the court's interpretation of the evidence was further proof Mysin was not 'involved in an accident' and had no duty to stop and comply with Vehicle Code sections 20003 and 20004." He therefore concludes the court's decision to deny the request was illogical and is contrary to the law. Defendant's claim is based upon a misreading of the transcript and an erroneous view of the law.

First, in regard to the transcript, the court's remarks were made in connection with sentencing, when it summarized its view of the evidence and determined that probation should be denied and a prison term imposed. Contrary to defendant's claim, the court specifically stated that "the law supports the jury's conclusion that [defendant] was involved in this accident." In the court's view, defendant was not merely a victim who just happened to be driving by the crash. It found that both defendant and Palamaryuk were driving too fast and were driving in response to one another. While Palamaryuk's decision to pass defendant at a reckless speed was not in response to anything defendant did at that particular moment, defendant nevertheless witnessed a terrible collision that involved a stranger and an acquaintance of his and caused his windshield to be shattered by debris from the two cars that collided.

Second, defendant again bases his argument on an erroneous understanding of the law governing the offense of hit and run

driving. Although a driver who causes an accident is clearly one who is involved in the accident (see *People v. Bammes, supra*, 265 Cal.App.2d 631; *People v. Rocovich* (1969) 269 Cal.App.2d 489, 493), considerations of causation, fault, and responsibility for the accident are not elements of the offense and are not predicate facts in a determination whether a driver is "involved in an accident" within the meaning of section 20001. (*People v. Bammes, supra,* 265 Cal.App.2d at pp. 631, 633; *People v. Braz, supra,* 65 Cal.App.4th at p. 432; *People v. Jimenez, supra*, 11 Cal.App.3d at p. 1626.) The trial court understood this and properly instructed the jury in this regard. In Part I we concluded the jury's verdict impliedly finding defendant was knowingly involved in an accident is supported by substantial evidence. In Part II we found no instructional error, and defendant does not assert his constitutional rights have been violated. Accordingly, on this record we conclude the trial court did not abuse its discretion in denying defendant's request for dismissal.

IV.

Conceded Sentencing Errors

Defendant contends the court erroneously sentenced him to a three-year prison term pursuant to section 20001, subdivision (b)(2), because the factual basis for that enhancement is not supported by substantial evidence, and he requests that we remand the matter for resentencing. He also contends, in a related theory, that the court erroneously ordered him to pay victim restitution in the amount of $12,977.86. Respondent

concedes the validity of these two claims. We agree with the parties and shall strike the restitution fine and remand the matter for resentencing.

A. Enhanced Sentence

Section 20001, subdivision (b) provides the applicable sentencing alternatives for a violation of section 20001. Subdivision (1) provides for imprisonment "in the state prison [for 16 months, 2, or 3 years], or in a county jail for not more than one year, or by a fine . . . or by both that imprisonment and fine." (§ 20001, subd. (b)(1); Pen. Code, § 18.)

Subdivision (2) of subdivision (b), however, provides a harsher penalty to be imposed under limited circumstances. It states: "If the accident described in subdivision (a) *results in* death or permanent, serious injury, any person who violates subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by . . . both that imprisonment and fine." (Emphasis added.)

Defendant asserts the trial court improperly sentenced him to a three-year prison term under subdivision (b)(2). He is correct. In *People v. Braz, supra*, 65 Cal.App.4th 425, the court held that "a court may not impose the penalties set forth in subdivision (b)(2) unless the defendant's failure to stop and present identification and render aid causes permanent, serious injury to the accident victim." (*Id.* at p. 432.) In so doing, the court considered the italicized language in the statute and concluded that "[i]t plainly provides that any permanent,

serious injury must be caused by a violation of subdivision (a)." (*Id.* at pp. 431-432.)

As both parties properly point out, defendant's failure to stop at the scene of the accident and render aid or provide identification did not cause or hasten Mrs. Jamieson's death. She died within moments of the impact, which caused significant internal injuries, the most significant of which were injuries to her heart.[21] The pathologist opined that she could only have survived for "[m]oments, maybe a minute, but basically once the impact took place, this person was dying and could not be saved."

Thus, because the evidence establishes that defendant's failure to stop and render aid did not cause the fatal injuries, the enhanced sentence imposed under section 20001, subdivision (b)(2) is unauthorized and must be reversed. Because the applicable sentence under subdivision (b)(1) requires an exercise of discretion, we shall remand the matter for resentencing.

B. Restitution Fine

The trial court ordered defendant to pay $12,977.86 in direct victim restitution pursuant to Penal Code section

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[21] The pathologist testified that "[t]he right ventricle of the heart was torn open. The aorta, which is the major vessel coming off of the heart and providing blood to the body was completely torn. It was transected in its entirety. There was nothing holding the aorta together."

1202.4.[22] The amount was based upon the burial expenses and the loss of the vehicle.

Penal Code section 1202.4 provides that "[i]n every case in which a victim has suffered economic loss *as a result of the defendant's conduct*, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." (Pen. Code, § 1202.4, subd. (f), italics added.)

Similar to the language in section 20001, subdivision (b)(2), the language in Penal Code section 1202.4, subdivision (f), requires that the victim's economic losses be *a result* of the defendant's conduct. The word "result" implies a causal connection. Giving the words of the statute their plain dictionary meaning (*City of Cotati v. Cashman, supra,* 29 Cal.4th at p. 75), "result" means "to proceed, spring, or arise as a consequence, effect, or conclusion." (Webster's 3d New Intern. Dict., *supra*, at p. 1937.) "Consequence" means "something that is produced by a cause . . . a natural or necessary result." (*Id.* at p. 482.)

Here defendant's conduct was failing to stop at the scene of the accident to render aid and provide the requisite information. He was acquitted of the manslaughter charge; it is undisputed his vehicle did not hit the victim's vehicle; and as

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[22] The court also imposed a restitution fine of $600 pursuant to Penal Code section 1202.4, subdivision (b).

the trial court found, Palamaryuk's decision to pass defendant at a reckless speed was not in response to anything defendant did at that particular moment. There has been no civil determination that defendant caused the victim's death or the damage to her vehicle, nor is the jury's implied finding that he was "involved in the accident" equivalent to a finding of causation or legal liability for the accident. (*People v. Bammes, supra,* 265 Cal.App.2d at pp. 631, 633; *People v. Braz, supra,* 65 Cal.App.4th at p. 432; *People v. Jimenez, supra*, 11 Cal.App.3d at p. 1626.)[23] Indeed, a determination of civil liability for the accident itself would have to take into consideration the victim's contributory negligence in pulling out into a lane of oncoming traffic.

Moreover, a violation of section 20001 gives rise to civil liability for damages only when the act of leaving the scene of the accident proximately causes further injury or death. (*Brooks v. E.J. Willig Truck Transp. Co.* (1953) 40 Cal.2d 669, 679; *Karl v. C.A. Reed Lumber Co., supra*, 275 Cal.App.2d at p. 361.) As

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[23] In *People v. Carbajal* (1995) 10 Cal.4th 1114, 1125, the court upheld imposition of a restitution fine as a condition of probation for hit and run driving where there was no question as to defendant's responsibility for the loss because he conceded his negligent driving caused the damage. The court therefore concluded "a trial court could properly determine restitution would serve a salutary rehabilitative purpose by directing the defendant to accept the social responsibility he attempted to evade when he fled the scene without identifying himself." By contrast, here the jury acquitted defendant of vehicular manslaughter and the evidence established he was not driving the vehicle that struck the victim. Thus, it cannot be said his conduct caused her fatal injuries.

we stated *ante*, defendant's failure to stop and render aid did not cause or aggravate Mrs. Jamieson's fatal injuries or the damage to her car. Accordingly, because we cannot conclude on this record the economic damages were caused or aggravated by his conduct, the restitution fine is unauthorized and must be stricken.

DISPOSITION

The restitution fine in the amount of $12,977.86 is stricken. The sentence imposed pursuant to subdivision (b)(2) of section 2001 is reversed and the matter remanded for resentencing in accordance with subdivision (b)(1). In all other respects the judgment of conviction is affirmed.

BLEASE, J.

We concur:

SCOTLAND, P. J.

BUTZ, J.